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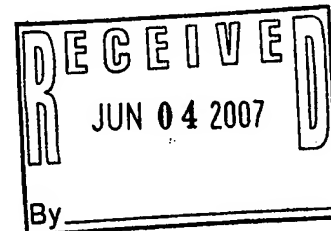
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OFFICE OF PETITIONS

In re Application of :
Aegerter, et al. :
Application No. 10/647,914 : ON PETITION
Filed: August 26, 2003 :
Attorney Docket No. 114183-20 (P00- :
0024US3) :



This is a decision on the petition, filed January 8, 2007, captioned, "REQUEST TO ADD AN INVENTOR UNDER 37 CFR 1.48 AND PETITION UNDER 37 CFR 1.47(a)." The petition will be treated under 37 CFR 1.48(a) for correction of inventorship and under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(3), which requires submission of an oath or declaration signed by the actual inventors. The petition was supplemented on January 10, 2007 when petitioners filed a replacement declaration executed by Mr. Curt D. Dundas.

The petition under 37 CFR 1.48(a) is **dismissed**.

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(3) is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. **FAILURE TO TIMELY RENEW THE PETITION WILL RESULT IN ABANDONMENT.** The reconsideration request should include a cover letter entitled "Renewed Petitions under 37 CFR §§ 1.48 and 1.183.

A declaration, filed on August 21, 2003, listed four joint inventors: Brian K. Aegerter, Curt T. Dundas, Tom L. Ritzdorf, Gary L. Curtis, and Michael Jolley.

Petitioners request that the Office excuse the absence of a signature for Mr. Michael Jolley, a previously signing joint inventor, on the concurrently filed replacement declaration that adds Steven L. Peace as a joint inventor.

Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating



an inventor's refusal or unavailability to sign a supplemental oath or declaration is waiver petition. See MPEP 603.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by: (1) a petition setting forth the desired change in inventorship, (2) including a statement from each person being added and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part; (3) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (4) the fee set forth in 37 CFR 1.17 (i); and (5) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

The petitions of record lack compliance with item (3).

Petitioners have not submitted an acceptable declaration. The declaration contains a noninitialed, nondated alterations to information for Inventor Gary L. Curtis. 37 CFR 1.52(c) states that “[a]ny interlineation, erasure, cancellation or other alteration of the application papers filed should be made on or before the signing of the accompanying oath or declaration pursuant to 1.63....” This includes the oath or declaration. The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration.

Fortunately, the deficiencies or inaccuracies relate to a signing inventor. Thus, pursuant to 37 CFR 1.67(a)(2), Inventor Curtis may correct his information in a supplemental declaration identifying the entire inventive entity and their information, but signed only by him. Another option would be to submit a complete ADS.

Petitioners have established that Mr. Michael Jolley has constructively refused to execute the replacement declaration after having received a copy of the application and the declaration. Mr. Jolley requested that his name be removed from the declaration in an e-mail sent September 14, 2006 to Attorney Keith V. Rockey. In view of the constructive refusal by Mr. Jolley to sign the declaration, it is agreed that justice would be served by waiving the requirement for his signature on the declaration. However, because the replacement declaration is defective (see above) and will not be entered, the petition cannot be granted at this time.

A review of financial records indicates that petitioners have paid one processing fee of \$130.00 and one petition fee of \$200.00. A Rule 183 petition fee of \$400.00 is required, rather than a \$200.00 Rule 47 petition fee. The \$200.00 balance due will be charged to deposit account no. 50-3891.

Further correspondence with respect to this matter should be addressed as follows:


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Attn: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.


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Office of Petitions